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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

WILLIAM H. TOBIN, FRANK J. CANONICO, III,
LARS O. ERIKSSON, DANTE E. PICCONE,
KENNETH R. RICKETTS, LOUIS TREFZ,
LAWRENCE J. WILLINGER, GERALD A. WOOLF,
Petitioners,

v.

GENERAL ELECTRIC COMPANY, JOHN F. WELCH, JR.,
GE PENSION TRUST,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTER STATEMENT OF QUESTION PRESENTED

Did the Third Circuit Court of Appeals err in applying a deferential standard of review to a benefit determination by an employee benefit plan administrator, in view of explicit language in the plan documents reserving to the administrator the discretion to interpret the plan and decide claims for benefits?

RULE 29.6 STATEMENT

General Electric Company has common stock and debt securities which are publicly traded. General Electric Company also has a number of subsidiaries in the United States and elsewhere. There are, however, only a limited number of these subsidiaries which have any outstanding equity or debt securities which are publicly held.

Those with publicly-held equity securities are:

- CAMCO, Inc. (Canada)
- General Electric Capital Corporation
  (formerly General Electric Credit Corporation)
- Montgomery Ward & Co., Inc.

Those which have only publicly-held debt securities are:

- Credit DeL'Est
- Finax FS AB
- Finax KK AB
- GE Capital Aviation Services, Ltd.
- GE Capital Mortgage Services, Inc.
- GE Capital (NZ) Ltd. (New Zealand)
- GE Capital PTY Ltd. (Australia)
- GECC Financial Corporation (Hawaii)
- GNA Corporation
- Gate Finance Corporation
- General Electric Capital Canada, Inc.
- General Electric Capital Services, Inc.
  (formerly General Electric Financial Services, Inc.)
- General Electric Credit International, N.V.
- Imaging Financial Services, Inc.
  (formerly Eastman Kodak Credit Corp.)
- International GE Capital Corporation
- Mercur Bank (Austria)
- Outlet Broadcasting, Inc.
- Service Bank GmbH

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents General Electric Company ("GE" or the "Company"), John F. Welch, Jr., and GE Pension Trust (collectively "Respondents") respectfully request that the Court deny the Petition for Writ of Certiorari seeking review of the judgment of the United States Court of Appeals for the Third Circuit entered on June 9, 1997.

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished. The opinion of the District Court is unpublished, but is available at 1996 WL 544230. The opinions are attached as part of the Appendix to the Petition for Writ of Certiorari at 1a-4a and 7a-24a, respectively.

JURISDICTION

The Court of Appeals entered its judgment on June 9, 1997. The Order of the Court of Appeals denying rehearing was entered on July 7, 1997. The jurisdiction of this Court has been invoked under 28 U.S.C. § 1254(1).

COUNTER STATEMENT OF THE CASE

This Counter Statement of the Case supplements Petitioners' Statement of the Case, which omits and misstates certain important facts.

Petitioners are eight former salaried employees of Respondent General Electric Company ("GE" or "the Company") who worked in GE's Static Power Component Operation ("SPCO"). SPCO was located in a portion of GE's Malvern, Pennsylvania facility which it shared with another GE business, the Protection and Control operation ("P&C"). In 1994, GE sold the assets of SPCO, and Petitioners ceased to be employed by GE. The P&C business, however, remains in operation at the Malvern facility. The purchaser of SPCO continues production in the same portion of the Malvern facility that was previously occupied by SPCO.

Even though eight of the nine original Plaintiffs continued to work for the purchaser, all of the Plaintiffs received layoff benefits pursuant to GE's Layoff Benefit Plan for Exempt Salaried Employees (the "Layoff Benefit Plan") in the amount of one week of pay for each full year of continuous service. Despite receiving these payments, Petitioners demanded additional benefits that are available under the GE Pension Plan (the "Pension Plan") and the Layoff Benefit Plan to employees who are terminated as a result of a "plant closing." Those "plant closing benefits"consist of an *additional*

week of severance pay for each year of continuous service at GE, plus expanded eligibility for early retirement pension benefits. A "plant closing" is defined in the Layoff Benefit Plan[1] as follows:

> [T]he announcement and carrying out of a plan to terminate and discontinue *all* Company operations at any plant, service shop or other facility.
>
> Such terms do not refer to the termination and discontinuance of only *part* of the Company's operations at any plant, service shop or other facility. . . .

(emphasis added). Petitioners claimed that GE's sale of SPCO constituted a plant closing within the meaning of the plans.

Both the Layoff Benefit Plan and the Pension Plan expressly reserved to GE the responsibility to administer GE's benefits and to exercise discretion in interpreting the plans.[2] In the exercise of this discretion, GE determined that the sale of SPCO was not a "plant closing" because, after the sale, GE continued to operate the P&C business at the Malvern facility and, therefore, had not discontinued "*all* Company operations" at that facility. GE's Pension Board, consisting of five senior officers of the Company, met initially to consider Petitioners' claims for plant closing benefits, and a second time to hear Petitioners' appeal. Both times, after reviewing detailed, written submissions from Petitioners' counsel, the Pension Board concluded that the sale of SPCO did not result in a "plant closing."

The Pension Board's conclusion was supported by substantial evidence.[3] SPCO and P&C occupied the same building

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1. In all material respects, the definition contained in the Pension Plan is identical.

2. The plan provisions granting that discretion are set forth in the District Court's opinion. Pet. App. 15a-16a.

3. Petitioners contend that "GE regularly referred to the proposed new location as a 'plant.'" Br. of Pet'rs at 3. However, these references pre-date the move of SPCO to Malvern in 1985. There is no evidence that the GE employees who made these statements knew where SPCO would be located, nor could they have anticipated the extent of its functional integration with the P&C operation. Moreover, contrary to Petitioners' assertions, the man-

and operated under a common roofline.[4] Although the two businesses were separated, in part, by a common wall, GE employees had unrestricted access to both sections of the building through unlocked doors. The two GE operations shared a multitude of services, including common payroll processing, localized human resources support, and a single shipping and receiving area. All openings for jobs in SPCO and P&C — whether union or non-union — were posted throughout the building, and employees from each business were free to apply for the positions. Perhaps most significantly, a single bargaining unit represented all GE unionized employees in the SPCO and P&C operations at the Malvern facility. Like Petitioners, the unionized SPCO employees who ceased working for GE received ordinary layoff benefits, but not plant closing benefits. After GE's sale of SPCO, six SPCO union-represented employees exercised "bumping" rights and actually displaced other bargaining unit members at P&C. In short, the Malvern facility was one structure which housed two GE operations. GE cited other, similar situations in which the exit or transfer of one of several GE businesses at a multi-business location was not treated as a plant closing; Petitioners were unable to identify any contrary applications of the controlling plan provisions.[5]

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ager of SPCO's operations in Malvern was not a "Plant Manager." *See* Br. of Pet'rs at 3. Rather, his title at GE was "Manager of Operations — SPCO."

4. Petitioners' statement that "a facility was constructed for SPCO adjacent to a building in Malvern that already housed ... [the P&C] operation" is misleading. SPCO was not housed in a separate building. Rather, SPCO relocated to the Malvern facility in an addition to the existing building.

5. Petitioners argue that GE awarded plant closing benefits to employees laid off after the closure of the appliance facility in Milwaukee, even though GE continued to operate a separate business at the same site. Br. of Pet'rs at 4. However, Petitioners fail to acknowledge the critical factual differences between the Milwaukee and Malvern situations, which the District Court found to be undisputed. Pet. App. 20a. The Milwaukee businesses were housed in different buildings, separated by an exterior, barbed-wired fence and linked only by a tunnel which was kept locked at all times. Unlike

Petitioners also suggest that GE's interpretation of the plan was motivated by self-interest. They note that the Layoff Benefit Plan was unfunded, and contend that GE's denial of plant closing benefits may have been motivated by a desire to avoid the cost of additional severance pay for nine employees. Br. of Pet'rs at 5. In that regard, Petitioners fail to acknowledge several important facts. Plant closing benefits under the Pension Plan are paid from a fully funded trust, like other pension benefits provided to GE retirees. Moreover, if GE had truly been motivated by a desire to reduce benefit costs, it could have done so rather easily, avoiding not only this litigation, but even the severance benefits which it actually paid to Petitioners. As noted above, eight of the nine original Plaintiffs went to work for the purchaser of SPCO at the same location. Under the Layoff Benefit Plan, employees who accept employment with a "successor" are not entitled to any severance pay. While GE elected not to treat the purchase of SPCO as a successorship, thereby allowing eight of the nine original Plaintiffs to each receive anywhere from twenty-one to forty-three weeks of severance pay, it could have interpreted its Layoff Benefit Plan differently and denied *any* severance benefits to plan participants who accepted positions with the purchaser of SPCO. Thus, notwithstanding Petitioners' characterizations, GE's conduct was hardly penurious or self-serving.

Petitioners' suit, filed in the Eastern District of Pennsylvania, asserted claims for benefits against both GE and the Pension Plan under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). The District Court granted Respondents' motion for summary judgment in its entirety. In accordance with *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989), the District Court held that a deferential standard of review applied to GE's interpretation of its own plans, and

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the GE employees in Malvern, employees of the two Milwaukee businesses were in separate bargaining units with no interchange of employees between the facilities. The circumstances in Milwaukee, therefore, have no bearing whatsoever on Petitioners' entitlement to such benefits in Malvern.

that the denial of plant closing benefits was neither unreasonable, nor arbitrary and capricious. Pet. App. 18a. In the alternative, the District Court concluded, summary judgment was warranted even under a *de novo* standard of review, based on undisputed evidence that GE's discontinuation of one of two product lines at the Malvern site did not constitute a "plant closing" under the terms of the plans. Pet. App. 22a n.14. On June 9, 1997, the Court of Appeals for the Third Circuit affirmed, specifically upholding the District Court's application of a deferential standard of review. Pet. App. 3a. Petitioners' Petition for Rehearing *En Banc* was denied by the Third Circuit on July 7, 1997.

REASONS FOR DENYING THE PETITION

I. This Case Does Not Present Issues Warranting The Grant Of Certiorari.

A. Consistent With This Court's Decision In *Firestone*, The Third Circuit Correctly Held That A Deferential Standard Of Review Applied To A Plan Administrator's Interpretation Of An ERISA Plan Which Explicitly Grants Discretion To That Administrator.

The Third Circuit Court of Appeals followed *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989), in applying a deferential standard of review to GE's interpretation of its benefit plans. Pet. App. 3a. In *Firestone*, as in the instant case, the employer was both the sponsor and administrator of an unfunded severance plan. *Id.* at 105. The Firestone plan provided severance pay to employees terminated as a result of a "reduction in work force." *Id.* When Firestone sold its Plastics Division to another company which rehired most of the employees in that division, Firestone denied severance benefits to affected employees after determining that the sale did not constitute a "reduction in work force" within the meaning of the severance plan. *Id.* at 106. The employees filed suit under 29 U.S.C. § 1132(a)(1)(B) to recover those severance benefits, contesting Firestone's interpretation of the plan.

This Court held that "principles of trust law" prescribe the appropriate standard of review for § 1132(a)(1)(B) actions. *Id.* at 111. If the terms of the trust confer discretion upon the trustee to construe disputed terms, the Court noted, trust principles dictate a "deferential standard of review when a trustee exercises [those] discretionary powers." *Id.* Where the trustee is not granted such discretion, however, as was the case with the Firestone plan, courts should "review[] the employee's claim as it would ... any other contract claim ... by looking to the terms of the plan and other manifestations of the parties' intent." *Id.* at 112-13. Accordingly, this Court held that a *de novo* review of denied benefit claims is required under ERISA § 1132(a)(1)(B), *"unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan."* *Id.* at 115 (emphasis added). Where the benefit plan gives the administrator such discretion, courts must apply a deferential standard of review. *Id.* at 111, 115.

Petitioners concede that both the Layoff Benefit Plan and the Pension Plan grant GE discretion to interpret their terms. Br. of Pet'rs at 6. Accordingly, the Third Circuit correctly held that *Firestone* governed the standard of review in this case, and that GE's interpretation of its benefit plans would not be disturbed unless it was arbitrary or capricious. *Firestone,* 489 U.S. at 111, 115.

1. The Alleged Conflicts Of Interest Do Not Alter The Standard Of Review.

Petitioners contend that GE's interpretation of the plant closing provisions are not entitled to deference because the managers and officers who made that interpretation were acting under a conflict of interest. Br. of Pet'rs at 7-8. In such a situation, Petitioners argue, courts should apply a *de novo,* rather than a deferential, standard of review. Br. of Pet'rs at 11-15. In effect, Petitioners ask this Court to overrule *Firestone.*

Contrary to Petitioners' characterization of the opinion, this Court specifically addressed the conflicts issue in *Firestone.* It concluded that where a benefit plan grants discre-

tion to the plan administrator, the potential for a conflict of interest does not open the administrator's decision to a *de novo* review. 489 U.S. at 115. Instead, this Court stated, "that conflict must be weighed as *a 'facto[r]* in determining whether there is an abuse of discretion.'" *Id.* (citing Restatement (Second) of Trusts § 187 comment d (1959)) (emphasis added). Accordingly, even if an administrator of a plan is acting under a potential conflict of interest, as Petitioners assert here, a court must apply a deferential standard of review. *Id.*

Petitioners acknowledge the obvious relevance of this Court's statements in *Firestone,* Br. of Pet'rs at 7, but attempt to minimize their importance by characterizing such statements as "dictum." Br. of Pet'rs at 7, 13, 15. They point out that the severance plan in *Firestone* did not reserve discretion to the plan administrator, thus precluding a deferential standard of review in that case. Although there may be some factual differences between the cases, the detailed analysis in *Firestone* cannot be disregarded. This Court carefully analyzed the issues under ERISA and the law of trusts, and clearly demarcated the boundaries that define the appropriate standards of review. Presumably, the rule of law announced by the Court was intended to provide needed guidance to the circuit courts in cases such as the instant action. To dismiss the *Firestone* decision as mere dicta would be inconsistent with the well-established rule that the reasoning and rationale of a prior decision of this Court, in addition to an actual holding, must be respected in subsequent decisions. *See Seminole Tribe of Fla. v. Florida,* 116 S. Ct. 1114, 1129 ("We adhere in this case, ... not to mere obiter dicta, but rather to the well-established rationale upon which the Court based the results of its earlier decisions."), *cert. denied,* 116 S. Ct. 1415, *and cert. denied,* 116 S. Ct. 1416 (1996); *see also Allegheny County v. ACLU, Greater Pittsburgh Chapter,* 492 U.S. 573, 668 (1989) ("As a general rule, the principle of stare decisis directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law.") (Kennedy, J., concurring and dissenting). The Third Circuit's decision below

adhered to the explicit language and rationale of *Firestone,* and should not be subjected to further review. *See* Sup. Ct. R. 10.

Even if this Court were to look beyond the language and rationale in *Firestone,* there would be no basis for disturbing the deference given to the plan administrator's decisions on Petitioners' claims for benefits. Petitioners presented no evidence that any bias or conflict of interest actually motivated the decision to deny plant closing benefits. In affirming the decision of the District Court, the Third Circuit noted that the lower court "considered the defendants' alleged conflict of interest as a factor, but concluded that it did not fatally infect the defendants' interpretation of the plan." Pet. App. 4a.

The Petition for Certiorari identifies two purported conflicts of interest, neither of which was found to warrant greater scrutiny of the benefit determinations. First, Petitioners contend that because GE previously determined that unionized employees at SPCO would not be eligible for plant closing benefits, this motivated GE to deny those benefits to Petitioners in order to maintain "good labor relations." Second, they argue that because the Layoff Benefit Plan was unfunded, the denial of plant closing benefits saved money for GE. Br. of Pet'rs at 7-8, 14.

As to the first alleged conflict, the plan language defining plant closing benefits was identical for both union and non-union employees. The fact that GE denied plant closing benefits to both groups and interpreted the plan language consistently does not reflect a conflict of interest. In essence, Petitioners argue that GE's interpretation of identical plan language should be accorded *less* deference merely because the interpretations were consistent. The absurdity of this argument is obvious. To the contrary, where a plan administrator is consistent in its interpretations, those interpretations should be entitled to more deference, not less. *See, e.g., Hutchins v. Champion Int'l Corp.,* 110 F.3d 1341, 1344 (CA8 1997); *Cash v. Wal-Mart Group Health Plan,* 107 F.3d 637, 641 (CA8 1997); *Brogan v. Holland,* 105 F.3d 158, 161 (CA4 1997).

As to the second purported conflict of interest, Petitioners argue that layoff benefits were paid from GE's general assets, and that GE's financial interest in the outcome of the dispute requires a *de novo* review. Br. of Pet'rs at 8.[6] In effect, Petitioners are asking this Court to eliminate the deferential standard of review whenever a plan is unfunded. This argument is entirely inconsistent with *Firestone,* which involved the identical "conflict" at issue in this case — an unfunded severance plan. Petitioners would have this Court abandon its prior rationale and adopt a sweeping new standard that would apply to thousands of unfunded benefit plans affecting millions of participants, ranging from medical benefit plans to severance pay arrangements. Respondents submit that no such abrogation of *Firestone* is warranted, especially on the facts of this case.

2. The Lower Courts Correctly Applied The Deferential Standard Of Review.

The Third Circuit's affirmance of the District Court's application of the deferential standard of review is wholly consistent with *Firestone.* In *Firestone,* this Court recognized that where a trustee is "given power to construe disputed or doubtful terms, . . . the trustee's interpretation will not be disturbed if reasonable." 489 U.S. at 111. In this case, the District Court found that Respondents' denial of plant closing benefits was neither unreasonable nor arbitrary and capricious, thus satisfying either formulation of the deferential standard of review. Pet. App. 18a. The plans at issue unequivocally conferred

6. Petitioners fail to note that the Pension Plan, unlike the Layoff Benefit Plan, is fully funded and, consequently, that the plant closing pension benefits which several of the Petitioners seek would have been paid from a fully funded plan. Thus, there is no basis for asserting a conflict of interest with regard to the decision to deny plant closing benefits under the Pension Plan. Furthermore, if the denial of plant closing pension benefits based on the Pension Board's interpretation of language in the Pension Plan is upheld under an arbitrary and capricious standard of review, there is no basis for reaching a different conclusion as to the plant closing benefits under the Layoff Benefit Plan, which contained identical operative language.

upon GE the "power to construe disputed or doubtful terms" as required by *Firestone*. 489 U.S. at 111. Specifically, the Layoff Benefit Plan provides:

> [T]he management and control of the operation and administration of the Plan shall be vested in the Company. The Company will solely make all determinations with respect to eligibility and benefits under this Plan and such determinations shall be final and binding. Accordingly, the administration of any claims arising under the Plan, including the discretionary authority to interpret terms, review, pay or deny any claims and the provisions of a full and fair review of claims shall be vested exclusively in the Company. For purposes of the Act, the Company shall be the Administrator of the Plan.

Pet. App. 15a-16a.[7] Under the Pension Plan, similar discretionary authority has been delegated to GE's Pension Board, which reviews and determines all claims for pension benefits. Pet. App. 15a. Petitioners concede that the GE plans contain the requisite reservations of discretion. Br. of Pet'rs at 6. Moreover, Petitioners do not argue in their Petition, nor can they, that GE's interpretation of the plans was unreasonable or subject to an abuse of discretion. Rather, the sole basis for their claim that the decision of the Third Circuit was erroneous is the court's application of a deferential standard of review, and as discussed above, that argument is foreclosed by *Firestone*.

B. Marginally Different Formulations Of The Standard Of Review Do Not Present "An Important Question Of Federal Law" Warranting Supreme Court Review.

Petitioners seek review of the Third Circuit Court of Appeals' decision because its description of the controlling rule of law varies slightly from formulations employed by

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7. This is consistent with Section 3(16)(A) of ERISA, 29 U.S.C. § 1102(16)(A), which allows the plan sponsor (in this case, GE) to serve as the "administrator," and which even provides that if no administrator is specifically identified in the plan document, the plan sponsor occupies that position by default.

other courts of appeals. Br. of Pet'rs at 9-10. Simply put, this is not the type of important issue that merits Supreme Court review. *See* Sup. Ct. R. 10.

The vast majority of the courts of appeals to consider the issue have held, consistent with *Firestone,* that an alleged conflict of interest does not deprive the plan administrator of a deferential standard of review if it is supported by a reservation of discretion in the plan document. At most, these courts have held, care must be taken to determine whether, as a factual matter, the alleged conflict actually infected the disputed plan interpretation. *See Chojnacki v. Georgia-Pacific Corp.,* 108 F.3d 810, 815 (CA7 1997) ("While a conflict of interest does not change the standard of review we apply to an administrator's decision, it will cause us to give the arbitrary and capricious standard more bite."); *Chambers v. Family Health Plan Corp.,* 100 F.3d 818, 825-26 (CA10 1996) (adopting "sliding scale approach" by which reviewing court applies an arbitrary and capricious standard but "decrease[s] the level of deference given to the conflicted administrator's decision in proportion to the seriousness of the conflict"); *Bellaire Gen. Hosp. v. Blue Cross Blue Shield of Mich.,* 97 F.3d 822, 828 n.9 (CA5 1996) ("A conflict of interest does not affect the standard of review, but rather is a factor to be considered in evaluating whether the plan administrator abused his discretion."); *Sullivan v. LTV Aerospace & Defense Co.,* 82 F.3d 1251, 1255 (CA2 1996) ("[W]e . . . adhere to the arbitrary and capricious standard of review in cases turning on whether the decision was based on an alleged conflict of interest, unless the conflict affected the choice of a reasonable interpretation."); *Doe v. Group Hospitalization & Med. Servs.,* 3 F.3d 80, 87 (CA4 1993) ("[T]he fiduciary decision will be entitled to some deference, but this deference will be lessened to the degree necessary to neutralize any untoward influence resulting from the conflict."); *Miller v. Metropolitan Life Ins. Co.,* 925 F.2d 979, 984-85 (CA6 1991) (holding that administrator's decision to terminate benefits "was reasonable" in spite of the administrator's conflict of interest). The slightly different applications of the deferential standard prescribed by this Court in *Firestone* are mere "shades of grey" causing no great rift among the

courts of appeals. Accordingly, there is no "real and embarrassing conflict of opinion and authority" among the courts of appeals that would warrant review by this Court. *See Rice v. Sioux City Mem'l Park Cemetery,* 349 U.S. 70, 79 (1955) (citation omitted).

Petitioners argue that the Ninth and Eleventh Circuits have departed from this general rule. *See Atwood v. Newmont Gold Co.,* 45 F.3d 1317 (CA9 1995); *Brown v. Blue Cross & Blue Shield of Ala., Inc.,* 898 F.2d 1556 (CA11 1990), *cert. denied,* 498 U.S. 1040 (1991). However, despite Petitioners' characterizations, these opinions reflect a similar adherence to the deferential standard of review — *unless* the beneficiary demonstrates a substantial conflict of interest. *See Atwood,* 45 F.3d at 1323; *Brown,* 898 F.2d at 1563. In *Brown,* the Eleventh Circuit held that "the abuse of discretion, or arbitrary and capricious, standard applies to cases such as this one, but the application of the standard is shaped by the circumstances of the inherent conflict of interest." *Id.* Although the court modified the standard of review in the face of a conflict by shifting the burden to the plan administrator to prove that its interpretation was not tainted by self-interest, that different standard does not come into play until the "plan beneficiary *demonstrates* a substantial conflict of interest. . . ." *Id.* at 1566 (emphasis added).

Similarly, the Ninth Circuit explained,

> [w]e ultimately apply a traditional abuse of discretion standard to the decisions of apparently conflicted . . . fiduciaries unless the affected beneficiary comes forward with further evidence indicating that the conflicting interest caused a breach of the administrator's fiduciary duty to the beneficiary.

Atwood, 45 F.3d at 1322-23 (citation omitted). The Ninth Circuit only modifies the deferential standard of review if the beneficiary provides "material, probative evidence, beyond the mere fact of the apparent conflict, tending to show that the fiduciary's self-interest caused a breach of the administrator's obligations to the beneficiary." *Id.* at 1323.

In this case, Petitioners failed to present such "material, probative evidence" of conflict. As the Third Circuit explained, "the district court considered the defendants' alleged conflict of interest as a factor, but concluded that it did not fatally infect the defendants' interpretation of the plan." Pet. App. 4a.[8] Thus, if there are any differences in the circuit courts' descriptions of the controlling rule of law, such issues are not presented by the facts of this case.

Moreover, Petitioners fail to mention a critical finding of the District Court which is fatal to their Petition: in the alternative, the District Court applied the *de novo* standard of review and nonetheless upheld GE's denial of Petitioners' plant closing benefits. Pet. App. 22a n.14. The District Court concluded that "even under a *de novo* standard of review, the SPCO closing did not constitute a 'plant closing' within the meaning of the Plans. Rather, GE eliminated one product manufactured at the site, while continuing other manufacturing operations." *Id.* This finding was fully briefed and not disturbed on appeal. Pet. App. 4a. Thus, the resolution of a purported conflict among the circuit courts regarding the proper standard of review would be irrelevant to the ultimate outcome of the instant case, because the District Court held that under *either* standard, GE's interpretation was correct. Pet. App. 22a n.14. Accordingly, the Petition for Writ of Certiorari on this issue should be denied.

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8. In *Atwood*, the court held that a similar conflict of interest — the fact that the fiduciary was both employer and plan administrator — did not present a conflict warranting the court's departure from a deferential standard of review. 45 F.3d at 1322-23.

CONCLUSION

For the foregoing reasons, Respondents General Electric Company, John F. Welch, Jr., and GE Pension Trust respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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